

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

ANTHONY F., by and through his next  
friends, EDWARD F. and LISA F.,  
LINDA S. AND DEANE S.,

Plaintiffs,

v.

SCHOOL COMMITTEE of the CITY of  
MEDFORD,

Defendant.

C.A. No. 04-10610-RWZ

**MEMORANDUM IN SUPPORT OF RENEWED MOTION TO AMEND ORDER  
TO ALLOW APPLICATION FOR IMMEDIATE APPEAL**

On June 1, 2005, the School Committee of the City of Medford ("Medford"), first moved this Court to amend that portion of its April 22, 2005, Memorandum of Decision which denied Medford's motion to dismiss the plaintiff's claim for fees related to the 2001-2002 IEP to provide the 29 U.S.C., §1292(b) certification required to permit an interlocutory appeal. The question of the appropriate statute of limitations to apply to an action to recover attorneys' fees and costs pursuant to 20 U.S.C. § 1415(i)(3)(B) has not yet been decided by the First Circuit. This is a controlling question of law as to which there is substantial ground for difference of opinion and an issue of critical importance to school committees who face budgetary constraints and to the plaintiffs who seek to recover their fees. A decision on this issue from the First Circuit before this Court assesses fees may materially advance the termination of this litigation since Medford would appeal after assessment, and if the Court of Appeals decides in Medford's favor the time required to assess fees will be eliminated.

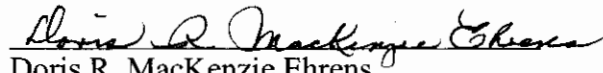
At a status conference on June 8, 2005, this Court expressed the position that it did not have jurisdiction to decide the motion because Medford had already filed a Notice of Appeal and suggested that counsel file a motion to remand in the Court of Appeals to permit this Court to amend the decision to provide the certification. Counsel for Medford did so, but the Court of Appeals questioned its jurisdiction. *See* Exhibit A to Medford's Renewed Motion To Amend Order To Allow Application For Immediate Appeal. Pursuant to that Court's June 28, 2005, order, the parties filed their Agreement to Voluntarily Withdraw appeal and the appeal was thereafter voluntarily dismissed. *See* Exhibit 1 hereto.

Medford set out the reasons certification is appropriate in this case in the memorandum of law in support of the original motion (docket #20) and that memorandum is incorporated herein by reference. Accordingly, this Court should amend its April 22, 2005, decision to state that the issue of the statute of limitations to apply to a claim for attorneys' fees pursuant to 20 U.S.C. § 1415(i)(3)(B) is a controlling issue of law as to which there is substantial ground for difference of opinion and that an immediate appeal may materially advance the ultimate termination of this litigation.

DATED at Quincy, Massachusetts this 19<sup>th</sup> day of September, 2005.

SCHOOL COMMITTEE of the CITY OF  
MEDFORD,

By its attorneys,



Doris R. MacKenzie Ehrens

BBO #544252

Regina Williams Tate

BBO # 492780

MURPHY, HESSE, TOOMEY & LEHANE, LL


300 Crown Colony Drive, Suite 410

Quincy, MA 02269-9126

(617) 479-5000

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that I have on this 19<sup>th</sup> day of September, 2005, cause a copy of the foregoing to be served upon counsel for the plaintiffs, John L. Geary, Geary & Associates, at 161 Summer Street, Kingston, MA 02364, via first class mail, postage prepaid.

  
Doris R. MacKenzie Ehren



AUG 16 2005

# United States Court of Appeals For the First Circuit

No. 05-1782

ANTHONY F., by and through his next friends, Edward  
F. and Lisa F.

Plaintiff - Appellee

v.

SCHOOL COMMITTEE OF THE CITY OF MEDFORD

Defendant - Appellant

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## JUDGMENT

**Entered: August 15, 2005**

Upon consideration of joint motion,

It is hereby ordered that this appeal be voluntarily dismissed pursuant to Fed. R.  
App. P. 42(b) with each party to bear its own costs.

Mandate to issue forthwith.

By the Court:  
Richard Cushing Donovan, Clerk

By MARGARET CARTER  
Chief Deputy Clerk

[cc: Daniel B. Walsh, Esq., John J. Geary, Esq., Regina W. Tate, Esq., Mary L.  
Gallant, Esq. and Doris R. MacKenzie Ehrens, Esq.]

# MANDATE

04-1 GOLD  
USDC MA  
Judge Zobel

## United States Court of Appeals For the First Circuit

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Mandate to issue forthwith.

**Certified and Issued as Mandate  
under Fed. R. App. P. 41.**

**Richard Cushing Donovan, Clerk**

  
**Deputy Clerk**

**Date:** 8-15-05

By the Court:

Richard Cushing Donovan, Clerk

By MARGARET CARTER  
Chief Deputy Clerk

[cc: Daniel B. Walsh, Esq., John J. Geary, Esq., Regina W. Tate, Esq., Mary L.  
Gallant, Esq. and Doris R. MacKenzie Ehrens, Esq.]